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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

Torture: the central human rights abuse in Asia

1. According to article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Furthermore, article 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) determines that each State Party shall undertake to prevent—in any territory under its jurisdiction—acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.

2. State-level torture also results in torture at other levels of society, such as domestic violence and sexual abuse. Sexual abuse, particularly rape, is one of the most heinous, brutal and dehumanising forms of torture. Yet the police, the military and the state—institutions charged with protecting society—are also far too often perpetrators of this form of torture, and these institutions thus re-victimise the victim. When the state and the elite keep the tradition of torture alive, it is difficult to create a tradition of dialogue and common understanding. To create the foundation for a democratic society, it is essential to eradicate torture.

3. In Asia, torture is still endemic, and a reality that affects all other rights. The freedom needed to develop an understanding of rights and the people's will to assert their rights are retarded by their consciousness of the widespread nature of torture. Torture is the reason vast masses of people in Asia are silent about the deep injustices they suffer. Torture is what keeps inequality alive. Some examples of torture's prevalence in Asia follow.

4. INDONESIA: During May 1998, the Indonesian military engineered a campaign of terror designed to prevent the toppling of the Suharto dictatorship. The main target of this campaign was the ethnic Chinese population. Besides the burning of buildings and people, the main mechanism of terror was the public gang rape of Chinese women. The psychological damage caused to the Chinese community has been immense, but has also been ignored. Despite the issue gaining a great deal of international attention and sympathy, the international community has failed to apply continuous pressure to ensure that the perpetrators are prosecuted and the victims properly compensated. Without this continuous pressure, the unreformed Indonesian prosecutions system will easily continue to ignore the rights of the victims to find justice, and similar strategies are likely to be used in future.

5. The June 2001 trial of 19 human rights defenders in Bandung, Central Java, also stands as an example of the common use of torture by the Indonesian police against activists there. An investigation by the Asian Human Rights Commission into cases of nine of the accused revealed that all had been brutally tortured and detained incommunicado for 5-7 days from their arrest on June 14. Even more disturbingly, the court—which is the only mechanism available for making complaints about torture by the police—has completely ignored subsequent complaints, and has supported the prosecuting police in every way imaginable. At this stage, there appears to be no chance of even a fair trial, let alone an investigation, prosecution and compensation for state torture.

6. INDIA: In many areas of India, beatings are not reported as torture or ill-treatment because they are so much a part of the arrest and detention process. This is particularly true in such areas as Jammu and Kashmir where detainees are routinely subjected to torture but rarely make complaints for fear of reprisals, and because they feel fortunate to be alive. In the broader society, upper caste men also use sexual abuse as a coercive mechanism to keep lower caste women, especially Dalit women, at the very bottom of society. In addition,

during communal riots, sexual abuse is a means by which the police take vengeance against a community; and when development programmes are implemented, sexual abuse is a way to subdue impoverished tribal people who protest against forcible eviction from their land.

7. BANGLADESH: In neighbouring Bangladesh many victims of rape can be tortured and raped again after their initial traumatic experience because they must remain in police custody for one or two days to undergo medical check-ups and other procedures. There the victims, particularly prostitutes, are exposed to threats by the police and may not be released from custody at all. In addition, existing laws—particularly the Public Security Act and Section 54 of the Special Powers Act—grant the authorities a licence to torture and make illegal arrests and detentions.

8. NEPAL: Problems of torture also exist in countries that have signed and ratified UN human rights conventions that should protect torture victims. Nepal, for instance, has ratified the ICCPR, and article 9(2) states that any section of an international act is as equally applicable as the municipal law. Article 14 of the Constitution of Nepal also guarantees that no one should be tortured. In addition to these legal protections, the 1996 Torture Compensation Act provides that anyone tortured in detention should be compensated. However, there is little effectiveness in the application of these laws, because ordinary courts do not have jurisdiction to punish the perpetrators; they can only recommend that the concerned department take action.

9. The Human Rights Commission Act has also opened a route to compensation for victims of torture or illegal detention, but again, the Human Rights Commission cannot directly compensate the victim and can only recommend that the concerned department or ministry take action against the alleged perpetrators. Since the promulgation of this act, there have been only a few torture cases where compensation has been awarded. Some cases have been before the courts for two or three years. In other cases, the courts have found that a medical examination of the victim was not done in time, and consequently, no case has been made. This is a major difficulty, for how can victims under the custody of the police make a medical examination that will incriminate the perpetrators who are holding them in custody? Moreover, the compensation, on those few occasions where is has been awarded, has been very low.

10. SRI LANKA: Similar problems exist in Sri Lanka, which ratified the CAT and enacted a domestic law for its implementation (Act No. 22 of 1994). Despite this, the courts have not successfully prosecuted any torturers under the Act, although the Supreme Court of Sri Lanka and the National Human Rights Commission declared after an inquiry that many people are guilty of committing torture. This lack of legal action against torturers can be explained (but not justified) by the conflicting nature of laws in Sri Lanka. While Sri Lanka's international obligations under the CAT and the domestic legal protections against torture in the 1994 Act protect its citizens, the *Prevention of Terrorism Act* (PTA) allows for arbitrary arrest, torture in detention and prolonged detention without trial. Confessions obtained under such detention are admissible in law, although it is commonly known that these confessions are made under duress. Due to prolonged detention, however, it is difficult to get medical proof to this effect.

11. About 240 victims of torture are brought monthly to Sri Lanka's public health institutions for treatment, according to the Bishop of Mannar. In a statement to Action de Chretiens pour l'Abolition de la Torture (ACAT), Bishop Rayappu Joseph said that careful studies revealed this statistic and made the following statement:

> Those not brought to these institutions, I am certain, would be several times this number [240 torture victims per month]. The types of torture resorted to by the

national armed forces and prison authorities on Tamil suspects and prisoners in remand are horrible and beyond description. Tamil youths are indiscriminately arrested on the slightest suspicion, kept for months and years without proper inquiry and are subjected to inhuman torture until they accept false accusations made against them. Thousands of Tamils are still languishing in detention centres and prisons.

The Bishop added that the great majority of victims of torture in Sri Lanka's war zones did not dare to reveal their experiences, even to judicial medical officers, after receiving death threats from the perpetrators.

12. The Human Rights Commission Act was introduced in 1996. Its provisions are adequate for the Commission to investigate violations of fundamental rights, including acts of torture. Any victim can invoke the Commission's jurisdiction in respect of violations or imminent violations. Unlike other statutes dealing with torture, the Human Rights Commission can, on its own, initiate inquiries into alleged violations of fundamental rights, including freedom from torture. However the Act does not provide an efficient procedure to grant relief to the victim.

13. CHINA: In China torture is also evident despite its ratification of the CAT. There, a combination of long-standing tolerance for the abuse of detainees and suspects, poor police training, inadequate funding of law enforcement and pressure to produce "evidence" to satisfy courts (who are no longer willing to convict on police statements) means police use of torture has reached epidemic levels. Chinese courts, however, routinely ignore defendants' claims that they have been tortured, even when they can show evidence of abuse in scars on their bodies. Torturers are very rarely prosecuted; and when they are, they are usually dealt with leniently. Certain kinds of torture outside the regular judicial process, such as torture in administrative detention and in non-custodial situations, are committed with complete impunity. China has yet to establish effective mechanisms to receive and investigate complaints of torture, and prosecute and punish perpetrators.

14. MYANMAR: In contrast to the above, Myanmar has not ratified any international covenants that would offer protection against torture, nor has it domestic laws to do likewise. Ample evidence collected by independent agencies working from outside the country indicates that the use of torture in Myanmar is particularly prevalent in military intelligence detention centres and prisons, and in areas of the country subjected to counter-insurgency operations. In the later case, rape and other forms of sexual abuse have been employed systemically as an act of war against populations in remote regions. Regards the former, to date the military government has extended limited cooperation only to the International Committee of the Red Cross for occasional visits to prisons and detention centres. Sadly, the Government of Myanmar remains largely oblivious to international attempts at scrutiny and reform.

15. From this brief overview of torture in the Asian region, it is clear that the implementation of the CAT requires the following state initiatives:
    - Torture must be treated as a criminal offence so that the CAT can be implemented by the prosecutor general (or equivalent), who should bear the legal responsibility for the prosecution of torture cases.
    - An independent investigation unit must be established and given the legal responsibility of investigating these types of crimes. These steps will not address the problem, however, unless those who are convicted of torture are sentenced properly.
    - The victims of this serious criminal act must be amply compensated, with the perpetrator/s paying part of the amount due.